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ACCOMMODATION BOOKING WEBSITES AT E-COMMERCE



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Calling a hotel through a phone to make a reservation is becoming less popular in these days, since the individuals prefer to use the Internet.

The developments of the Internet and technology have changed the process of hotel reservation as well as almost every sector in the market. Now, we are able to book hotels and undertakings around the world and in Turkey in just seconds via the online booking websites just a click away.

Such online booking websites (Websites) which provide great convenience to the travelers have become a hot topic where the state and the users have many different approaches. Imposing certain sanctions on the Websites that operate its' business in Turkey by the relevant legislation has brought the light to such hot topic.

So why does the Websites are being sanctioned and what are the breaking news in this respect? To understand the situation, we need to look at a decision published by the Competition Board in 2017 and the unfair competition case that came after it. This will shed light on the events occurred in relation to the Websites.

A Competition Investigation and Unfair Competition Lawsuit

Turkish Competition Authority (**Authority**) conducted an investigation to determine whether the Law on the Protection of Competition has been breached by the campaign of "best price guarantee" of one of the leading companies in tourism, Booking.com B.V. (**Booking**) and Turkey office Bookingdotco Support Services Limited Company's application. The Authority decided that the agreements concluded between Booking and accommodation facilities fall in the scope of competition-restricting agreements and this constitutes a breach of the law. As a result of the investigation, the Authority imposed a huge amount of an administrative fine on Booking. Then, it is identified that this decision brought up many online booking websites to the agenda.



Other than the competition investigation, Association of Turkish Travel Agencies (**TÜRSAB**) initiated a lawsuit against Booking in 2015 due to the increased numbers of complaints of the travel agencies regarding revenue loss. The court decided to cease Booking's Turkey operations with a temporary injunction in 2017. Since the status of lawsuit is ongoing; the temporary injunction sentence is still applicable and Booking.com is not available for use in purpose of hotel reservations in Turkey.

Also, considering TÜRSAB's latest press releases, we can say that these topics will remain on headlines due to TÜRSAB is preparing for many other lawsuits on foreign based Websites.

Online Booking Websites: Legal Dimension and Position

In order to determine the legal position and regulations that the Websites must comply with, it is necessary to evaluate the concept from multiple legal aspects such as tax, electronic commerce, consumer protection and those related to travel agencies. Therefore, we will briefly mention about the rules that must be followed due to the performance of these activities online rather than the traditional regulations for offline activities that must be followed.

Performed E-Commerce Activity

The Act On the Regulation of Electronic Commerce defines Intermediary Service Provider as “real or legal persons that provides an electronic environment where others can conduct economic and commercial activities”. The Service Provider is described as “real or legal persons engaging in electronic commerce activity” in the Act. When the definitions are evaluated, it can be said that the activities of Websites generally fall within the scope of the definition of Intermediary Service Provider. Intermediary Service Providers have many responsibilities under electronic commerce regulation due to their activities. The reason to bring such responsibilities is derived from creating a structure that is safer; more organized and does not give any possibility to mislead the users.



The Intermediary Service Provider is obliged to give information regarding Company’s trade name, central registration system number, head office address, KEP number, telephone number and e-mail address; if available it’s business name and registered trademark name; trade association and sectoral institution which the company is a member of and code of professional conduct and the ways of reaching to these information electronically in its own electronic environment and on the main page and directly under the heading of contact.

In addition, there should be “transaction guide” that can be accessed directly from the main page showing how to make transactions electronically by Intermediary Service Providers. This section should include, but not limited to, the technical steps of concluding contracts, entering the delivery and payment information and confirming the reservations in addition to the summary order form and opportunity to change the order, the privacy rules for personal data and the alternative dispute resolution methods.

Another major regulation is related to ordering process. In this context, Intermediary Service Provider must provide the followings, including but not limited to:

- Total amount, including tax and delivery expenses that the customer will pay and other contract details, should be clear in the course of the order approval and before entering the payment information to the Website,
- If it is not possible to determine the total amount of the product or the service, calculating way of pricing or the delivery, the information related to the additional costs may be paid after the order should be given to the customer,
- Intermediary Service Provider should provide technical tools to the customers in the approval page for reviewing their order summary to check whether they have made a data entry mistake. If they have made a mistake, there should be options to go back or change the false data they entered,
- Customer should receive the contract obligations and general standard terms and conditions either physically or electronically,
- After the completion of the transaction, the customer should be contacted via network and at least one way from e-mail, text message, phone call or fax,
- Without prejudice to the relevant legislation, taking necessary measures to protect personal data and to prevent any illegal access to personal data.

As mentioned above, although the main reason why the Websites are currently on the agenda is the unfair competition claim, there are many barriers for the Websites to be considered as lawful. As a first step, it should be precisely detected the legislations required to evaluate especially tax-related issues, consumer legislation, personal data legislation, electronic commerce regulations and regulations regarding travel agencies. Then the studies should be carried out in order to ensure the compliance of the Website with the legislation. In case such studies are carried out during the installation phase of the Website, it will prevent substantial changes to be made afterwards and waste of labor and capital.

Answers. Not theories.

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About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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